



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

The Honorable Thomas E. White
Hamilton County Attorney
P. O. Box 831
Hamilton, Texas 76531

Letter Opinion No. 96-017

Re: Whether a commissioners court may
determine what foods are served in the
county jail (ID# 35084)

Dear Mr. White:

You have asked whether a "Commissioners Court can make specific objections to certain foods purchased by the sheriff to be served to prisoners." You enclosed with your request letter a specific listing of foods that the Hamilton County Commissioners Court desires to prohibit the sheriff from purchasing for county jail inmates. We quote the list as follows:

Cod Fillets @ \$3.66 per lb.	Chicken Breasts @ \$2.58 per lb.
<u>Folgers</u> Coffee	Coffee (any type)
Mushrooms	Cool Whip
Celery	Coconut
Stuffed Olives	Durkee Fried Onions
Ripe Olives	Pimento Cheese Spread
Whipping Cream	Half & Half
T.V. Onion Rings	Cottage Cheese
<u>Mrs. Baird's Bread</u>	Pie Crust
Cantaloupe	Cream of Mushroom Soup
*Light Tuna--66 oz. container \$40.88 (\$0.62 per oz. or \$9.92 per lb.)	

You suggest that this issue is governed by Attorney General Opinion H-1190, in which this office concluded that "[t]he authority of the commissioners court over the jail is limited to providing the jail, adequate funding, and broad operational guidelines which leave the actual operation of the jail with the sheriff." Attorney General Opinion H-1190 (1978) at 3. For the following reasons, we agree.

The former articles of the Revised Civil Statutes construed in Attorney General Opinion H-1190 have been recodified in the Local Government Code. In particular, former V.T.C.S. article 5115¹ has been recodified at Local Government Code chapter

¹Former article 5115 provided in part:

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound,

351, subchapter A, *see* Act of May 1, 1987, 70th Leg., R.S., ch. 149, §§ 1, 49, 1987 Tex. Gen. Laws 707, 1141-44, 1306-08, and former V.T.C.S. article 5116(a) and (b)² has been recodified at Local Government Code section 351.041, *see id.* at 1145, 1306-08. The recodification of those articles of the Revised Civil Statutes did not substantively change the law. *Id.* § 51, at 1308. Section 351.041,³ like former article 5116(b), which was analyzed in Attorney General Opinion H-1190, vests in the sheriff the "supervision and control over the jail." The determination of which items shall be included in, or excluded from, food service to the inmates falls within the sheriff's "supervision and control over the jail."

(footnote continued)

fire resistant and kept in good repair. Furthermore, they shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health. Such jails shall comply with the provisions of this Act and with the rules and procedures of the Commission on Jail Standards.

Act of May 30, 1975, 64th Leg., R.S., ch. 480, § 15, 1975 Tex. Gen. Laws 1278, 1283, *repealed by* Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49, 1987 Tex. Gen. Laws 707, 1306-08.

²Former article 5116 provided in part:

(a) Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners.

(b) The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail.

Act of May 19, 1973, 63d Leg., R.S., ch. 224, § 1, 1973 Tex. Gen. Laws 520, 520, *repealed by* Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49, 1987 Tex. Gen. Laws 707, 1306-08.

³Section 351.041 provides:

(a) The sheriff of each county is the keeper of the county jail. The sheriff shall safely keep all prisoners committed to the jail by a lawful authority, subject to an order of the proper court.

(b) The sheriff may appoint a jailer to operate the jail and meet the needs of the prisoners, but the sheriff shall continue to exercise supervision and control over the jail.

On the other hand, section 351.010 of the Local Government Code⁴ does impose on the commissioners court the duty to ensure that the county jail is "provided with food prepared and served in a palatable and sanitary manner according to good dietary practices and of sufficient quality to maintain good health." Although section 351.010 does not expressly state that this duty falls on the commissioners court, former article 5115, from which section 351.010 was nonsubstantively recodified, *see id.* §§ 1, 49, at 1144, 1306-08, did so state: "[The commissioners courts] shall cause . . . that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health." Act of May 30, 1975, 64th Leg., R.S., ch. 480, § 15, 1975 Tex. Gen. Laws 1278, 1283, *repealed by* Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49, 1987 Tex. Gen. Laws 707, 1306-08; *see also* Local Gov't Code § 351.001 ("The commissioners court of a county shall provide safe and suitable jails for the county."). The commissioners court of the county does not, however, have the authority to interfere with the sheriff's selection of food items for the jail food service except to the extent that such interference is necessary to ensure that the jail food meets the standards of section 351.010. We do not believe that a commissioners' court's ban of the items on the above-quoted list could reasonably be understood as an appropriate measure within the commissioners court's discretion in the performance of its duty under section 351.010.

S U M M A R Y

The sheriff of a county has the authority under section 351.041 of the Local Government Code to supervise and control the county jail, including the authority to determine which items shall be included in, or excluded from, food service to the inmates. The commissioners court of the county does not have the authority to interfere with the sheriff's selection of food items for the jail food service except to the extent that such interference is necessary to

⁴Section 351.010 provides:

A county jail must be:

- (1) provided with safe water in ample quantity;
- (2) provided with sewage disposal facilities in accordance with good sanitation standards;
- (3) provided with food prepared and served in a palatable and sanitary manner according to good dietary practices and of sufficient quality to maintain good health; and
- (4) maintained in a clean and sanitary condition in accordance with standards of sanitation and health.

ensure that "food [is] prepared and served in a palatable and sanitary manner according to good dietary practices and of sufficient quality to maintain good health," Local Gov't Code § 351.010.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

James B. Pinson
Assistant Attorney General
Opinion Committee